



April 26, 2000

Mr. Keith Stretcher  
City Attorney  
City of Midland  
P.O. Box 1152  
Midland, Texas 79702-1152

OR2000-1632

Dear Mr. Stretcher:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 134856.

The City of Midland Police Department (the “department”) received a request from the Texas Workers’ Compensation Commission (the “commission”) for a specified incident report involving a work-related fatality. You have provided for our review the incident report at issue. You assert that the requested information is excepted from required public disclosure under sections 552.101, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

In its written request, the commission explains that it is “currently collecting data on work-related fatalities as part of a program conducted by the State of Texas in cooperation with the Bureau of Labor Statistics.” The commission also states that the information “will be used for statistical purposes only and will be kept strictly confidential.” We note at the outset that a governmental body may transfer information to another governmental body subject to the Public Information Act (the “Act”) without violating the confidentiality of the information, and without waiving exceptions to disclosure. *See* Attorney General Opinion H-917 at 1 (1976); Open Records Decision No. 661 at 3 (1991). Therefore, the department may release the information at issue, in its entirety, to the commission without implicating the Act’s prohibition against selective disclosure, and without waiving any of the exceptions under the Act that may require or permit the department to withhold the information from the public. *See* Attorney General Opinion JM-119 at 2 (1983); *see also* Gov’t Code § 552.007(b) (prohibiting the withholding of information to a member of the public if the governmental body has previously released the information to another member of the public). We shall nevertheless herein address the exceptions you have asserted.

You first argue that the information, in its entirety, must be withheld pursuant to section 552.101 in conjunction with the common law right of privacy.<sup>1</sup> Section 552.101 excepts

---

<sup>1</sup> Although you state “constitutional privacy,” the case law you cite as well as your argument both pertain to the common law right to privacy.

from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses common law privacy and excepts from public disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Personal information must be withheld from the public on the basis of common law privacy when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). Even if information otherwise meets both prongs of the above-stated test, we note that the common law right of privacy lapses upon the death of the individual. Attorney General Opinion H-917 (1976); Open Records Decision No. 272 (1981). We do not agree that the entirety of the information meets both prongs of the above-stated test. We do find, however, that the submitted documents do contain some information that would ordinarily be excepted from required public disclosure as implicating the common law right of privacy of a named individual. However, we note that the individual in question is indicated to be deceased. We therefore conclude that none of the submitted information is excepted from disclosure by section 552.101 in conjunction with the common law right of privacy.

You also assert section 552.108 of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). You state that the requested information pertains to a case that has concluded, and that did not result in a conviction or deferred adjudication. We therefore agree that section 552.108(a)(2) is applicable in this instance. However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App. --Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); *see also* Open Records Decision No. 127 (1976) (summarizing the types of information that is considered to be basic front page information). Thus, with the exception of the basic front page information, we conclude you may withhold the requested information pursuant to section 552.108(a)(2) of the Government Code. Because section 552.108 is dispositive, we do not address your remaining arguments against release of the information, except to say that the basic front page information is not otherwise excepted from required public disclosure.

In summary, the department's release of the entirety of the information to the commission does not constitute a release to the public, and such release therefore would not operate to waive any of the exceptions under the Act that may require or permit the department to withhold the information from a member of the public. The department may withhold responsive information pursuant to section 552.108(a)(2) of the Government Code, but the department must release the basic front page information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

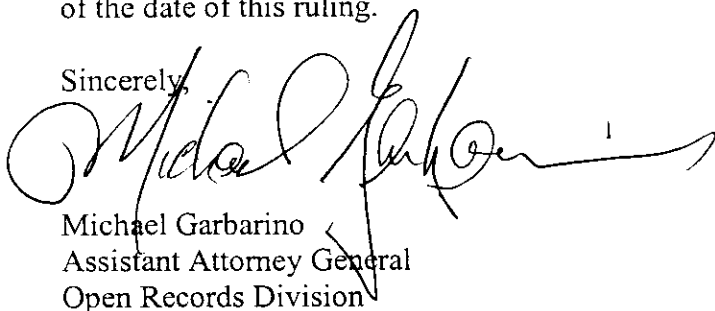
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Garbarino  
Assistant Attorney General  
Open Records Division

MG/ljp

Ref: ID# 134856

Encl. Submitted documents

cc: Ms. Celia Villarreal  
Workers' Compensation Commission  
4000 South IH 35  
Austin, Texas 78704-7491  
(w/o enclosures)